



National **PROPANE GAS** Association

1600 Eisenhower Lane • Suite 100 • Lisle, IL 60532 • (630) 515-0600 • Fax (630) 515-8774
E-mail: info@npga.org

July 3, 2002

Ms. Susan Gorsky
U.S. Department of Transportation
Office of Hazardous Materials Standards
Research and Special Programs Administration
400 Seventh Street, S.W., Room 8422
Washington, DC 20590-0001

Re: Docket No. RSPA-02-12064 (HM-232)

Dear Ms. Gorsky:

The purpose of this letter is to provide comments on the May 2, 2002 Notice of Proposed Rulemaking (NOPR) seeking to enhance security by imposing certain new requirements upon offerors and transporters of hazardous materials. NPGA greatly appreciates RSPA's extension of the comment period to July 3, 2002.

NPGA is the national trade association of the LP-gas (principally propane) industry with a membership of over 3,600 companies, including 39 affiliated state and regional associations representing members in all 50 states. Although the single largest group of NPGA members are retail marketers of propane gas, the membership includes propane producers, transporters and wholesalers, as well as manufacturers and distributors of associated equipment, containers and appliances. Propane gas is used in over 18 million installations nationwide for home and commercial heating and cooking, in agriculture, in industrial processing, and as a clean air alternative engine fuel for both over-the-road vehicles and industrial lift trucks.

The NOPR proposes changes in four distinct areas. First, each motor carrier registered with RSPA would be required to keep a copy of its current registration certificate on each vehicle used to transport hazardous materials. Second, all shipping papers (or an attachment thereto) would have to include the name of the shipment consignor, the address from which the shipment originates, and the name and address of each person to whom the shipment will be delivered. The shipping paper would also have to include the registration number (if applicable) of the person offering the shipment. Third, all registered hazmat transporters would be required to develop and implement written plans to assure security of all shipments. The plans must address personnel security; unauthorized access; and en route security at a minimum. Fourth, the rule would require hazardous materials employees to receive training (within three months of the date

of the final rule) on how to assure the security of hazardous materials that are transported in commerce. NPGA believes that these four proposed requirements will not appreciably increase the security of hazardous materials transportation in the United States in general, or in the propane industry in particular. Indeed, the proposals may serve only to distract company personnel and drain resources from more immediate and real day-to-day safety needs.

1. RSPA proposes to require hazmat transporters to carry a copy of the registration certificate in each vehicle transporting hazardous materials. Propane marketers are subject to 49 CFR Part 107 Subpart G, which requires certain offerors and transporters of hazardous materials, including hazardous waste, to file an annual registration statement with the U.S. Department of Transportation (and of course to pay a fee). Companies registering and paying the fee receive a Hazardous Materials Certificate of Registration which includes a registration number, issue date, and expiration date. Currently, hazmat transporters need to display their registration number on a document carried on each truck, *but need not maintain an actual copy of the certificate itself on each vehicle*. As a matter of convenience, most propane marketers already maintain a copy of the registration certificate on-board each truck. NPGA does not oppose this proposal, although it is hard to envision an increase in either safety or security coming as a result.

2. RSPA proposes to require shipping papers (or an attachment thereto) to include the name of the shipment consignor, the address from which the shipment originates, and the name and address of each person to whom the shipment will be delivered. RSPA's proposed shipping paper requirement is wholly unworkable for the propane industry. NPGA's 3,600 member companies utilize approximately 30,000 local delivery trucks (bobtails), 8,000 long-haul transports, and thousands of cylinder delivery vehicles every day serving millions of customers nationwide. These companies employ a wide variety of methods to forecast, schedule and dispatch propane deliveries to residential and commercial consumers. However, there is one common thread among all propane delivery fleets: propane delivery schedules must be changed frequently, often during the course of each day, to meet the changing needs of millions of residential and commercial propane consumers. In many cases, these needs are of an emergency nature, such as homes without heat in winter or commercial customers without a required source of energy, and must be responded to without delay. The creation of lists envisioned by RSPA, and mandating that trucks deliver only to customers on such pre-determined lists, will generate severe operational difficulties for the propane industry, and would be virtually impossible to comply with.

Most types of delivery businesses respond to specific customer orders, or otherwise have discrete parcels or packages on hand that must be delivered. These types of deliveries can generally be handled and scheduled on a rational and orderly basis. Unlike these businesses, however, propane is generally not "ordered" by the customers that use the product. Consumers of propane have storage tanks on-site with enough inventory to meet their heating, cooking or process needs for a period of time. Propane company trucks then replenish these domestic supply tanks, without the customers normally contacting the delivery company or even knowing that a delivery is planned. The replenishment cycle speeds up dramatically during cold winter weather, as customer usage escalates.

A variety of systems are used to schedule these replenishment deliveries. Some work off of anticipated customer usage, based on prior usage and weather, while others work on elapsed time. These systems may generate replenishment forecasts either monthly, weekly, or daily, but such forecasts are only estimates that do not account for variability in customer usage, changing weather, customer credit and payment patterns, and other factors. These replenishment forecasts are only one tool used by a company; most will permit the driver to use his own judgment on which specific customers to visit that day. The driver will consider driving conditions, contacts from dispatchers, calls from customers, and other means while he is on the road to determine which customers to visit, and in which order. It is important to note that many propane delivery systems do not generate daily customer lists, and for those that do, these lists are often supplemented with revisions throughout the day.

A single propane delivery vehicle may be responsible for servicing 1,000 or more individual customers, and may make 30 to 50 deliveries per day. While a driver may leave in the morning with a planned schedule, this schedule will often change over the course of the day. For example, a customer not scheduled for delivery may run out of propane, creating an emergency situation that the driver must respond to through a call from the dispatcher in the office. Other customers may reserve the right to call and order their propane, such as homeowners or commercial businesses that have limited access to their properties, such as a locked gate. These customers may call during the course of the day and the driver may be dispatched to serve them among his scheduled deliveries. A significant proportion of all propane customers reserve such a right – they are known in the industry as “will calls.” A third circumstance affecting propane delivery is inclement weather or poor driving conditions. Certain customers simply may not be able to be reached on certain days due to bad road conditions. It is important to remember that propane is primarily consumed and delivered during the coldest and worst weather of the year.

Propane is primarily used in rural areas, and drivers may need to travel long distances to respond to an emergency call or other special situation. When diverted, a driver may opt to serve an entirely different set of accounts than those originally scheduled in order to make the most efficient use of his time and fuel. An appropriate example would be a truck dispatched to a mountain-top home or a remote farm-house for an out-of-gas emergency call. Having driven to this area, the driver may then choose to service other calls in that vicinity rather than return to his planned schedule. In doing so, he may empty the truck and go to re-load at a nearby satellite re-loading plant, rather than return to his home-base for reloading as originally planned, further diverging from the originally scheduled plan. .

It is important to note that propane delivery drivers are subject to the Hours of Service regulations, and that propane delivery operations are highly seasonal, with propane primarily being used as a winter heating fuel. Any loss of delivery efficiency must be addressed by expanding the size of the delivery fleet by an equivalent amount to meet these peak demand periods. For example, cutting a delivery driver’s average deliveries from 30 stops per day to 20 stops per day means that the delivery fleet must be increased by 50% simply to keep all the customers’ tanks filled. The unintended consequences of this rulemaking may mean placing significant numbers of additional hazardous materials vehicles to the road, with their increased risk of exposure and additional costs to both the propane industry and the consumer.

Currently, new technologies are being developed with the goal of enhancing the efficiency of propane deliveries and making propane delivery schedules more predictable. These include the use of remote tank monitoring systems, as well as delivery programs that make use of sophisticated mapping, routing and advanced scheduling features. These products are largely in the developmental and piloting stages, and remain years if not decades from widespread industry utilization. Some companies who have pilot tested sophisticated routing software have reported failures of their pilot programs. One company in particular reported the complete failure of a sophisticated daily delivery scheduling system that it attempted to implement at substantial cost last winter. It remains unclear whether a cost-effective technological solution will become available to allow the propane industry to forecast and schedule daily deliveries with any degree of certainty. It definitely does not exist today, and will not exist in the near-term future.

One possible means of retaining driver flexibility is to allow the driver to modify the shipping paper, and/or its attached consignee list, during daily deliveries. The NPRM does not address whether any such modification is allowable, but it also does not expressly prohibit it. Also, the NPRM is silent with respect to whether the delivery list must be properly sequenced, requiring customers to be served as ordered on the list. NPGA strongly opposes the shipping paper requirement, but, if RSPA insists on implementing it, urges that driver modifications be allowed to any daily shipping paper delivery list, and that customers be allowed to be visited out of order. Given that lists may be modified, NPGA wonders what types of enforcement actions will be taken against drivers and companies who are making legitimate deliveries to customers who may not be included either on an original or modified delivery list, or who may be visited out of order. RSPA's goal should be to protect citizens from those toxic, highly hazardous chemicals that could be used as a weapon of mass destruction, not in causing significant disruptions to the American winter heating fuel delivery infrastructure.

NPGA believes that the proposed costs as estimated by RSPA to create and modify daily delivery lists are dramatically understated. The actual costs will be of two types. First, there will be significant costs to upgrade systems for generating and managing daily delivery schedule. Beyond the initial costs to develop such systems, which are unknown at this time, there will be ongoing costs to manage daily lists. Currently, NPGA estimates that one hour of clerical staff time will be spent per day, per delivery vehicle, to maintain such lists. Assuming 40,000 trucks delivering propane within the industry, this translates to about 10 million clerical hours per year. At an employment cost of \$20 per hour, *the direct labor costs to the propane industry will be approximately \$200 million per year.* Second, there will be a decrease in the number of deliveries each delivery vehicle can make with the daily delivery list requirement. The degree of diminished productivity will depend on whether the driver is allowed to modify the daily delivery list. If no modifications are allowed, then NPGA believes that *delivery productivity may reduced by 30-50%.*

Even with permission to modify the delivery schedule, there will be a reduction in efficiency, as driver time will now be spent creating and modifying formal schedules and lists, rather than essential job functions. Currently, NPGA estimates that 30 minutes of driver time each day will be spent on shipping lists, or 2.5 hours per 40 hour week. This translates to a corresponding 6% loss of productivity, meaning that the delivery fleet must be increased by 6%

to accommodate the same number of deliveries. Assuming a fleet of 40,000 vehicles, 2,400 new vehicles must be put in service to accommodate reduced productivity. With an annual vehicle operating cost of \$50,000 per year, this translates to *another \$100 million of annual cost for the propane industry*

Clearly, the costs of the proposed shipping paper initiative are exceedingly high. However, NPGA recognizes that RSPA faces significant pressure to address the national concern for security and the well-being of the public. Does having a shipping paper consignee list in local fuel delivery trucks add to the security of the American people? We believe the answer is “NO”. RSPA states that the purpose of a consignee list will be to “assist law enforcement personnel to promptly ascertain the legitimacy of hazardous materials shipments during routine or random roadside inspections.” There are already numerous ways to identify whether a driver and his delivery cargo are “legitimate”, including the CDL with appropriate endorsements, health card, and other company-specific credentials or information as appropriate. We are also aware that a pilot program for additional transport worker credentialing may be initiated through the Transportation Security Administration. Furthermore, other governmental initiatives are also underway to screen employees involved in hazardous materials transportation. Most shipping companies can be readily contacted during the course of a random inspection to determine whether a load or its driver are legitimate. In cases where there are questions involving a shipment, the load can always be held until an appropriate contact person is located.

Of course, all types of information, including shipping papers, can be readily falsified, and it must be assumed that individuals with the wherewithal and determination to initiate an illegal hazardous materials shipment will also be able to produce shipping papers as described in the NPRM. Also, given that illegitimate loads are the very rare exception, the likelihood of stopping an inappropriate hazardous material load by means of random or roadside inspection will be remote, at best. Furthermore, it is likely that illegitimate loads will be disguised in such a way that they will never be stopped for a road-side inspection at the outset.

Rather, the vast majority of inspections and enforcement actions will be taken against legitimate drivers making authorized deliveries. The rule as it is currently written will be an easy tool for zealous field personnel to use to generate fines and enforcement actions. For example, will a driver in the process of making a legitimate delivery to a customer inadvertently left off a consignee list be placed out of service for this infraction? Will he be detained, and if so, for how long? Will the company’s “out of service” inspection ranking be affected based on this action, so that a carrier risks having their safety rating lowered? Undoubtedly, the true consequences of a mandatory consignee list will be many more enforcement actions and downgraded carrier ratings against legitimate companies, while the net enhancement to security will be negligible. NPGA strongly urges RSPA to eliminate a consignee list requirement.

3. RSPA proposes to require the development and implementation of written security plans. NPGA is deeply concerned with the proposal to require development and implementation of written Security Plans. NPGA certainly understands the government’s desire to seek ways to increase security and advocate security planning in the wake of September 11, particularly with respect to transportation and storage of large quantities of high-hazard materials that may be used

as weapons of mass destruction. However, the written security plan proposal has several basic flaws.

Our concerns in this area fall into three categories: First, the planning requirement covers too broad a range of materials, covering essentially every placarded transportation shipment in America, many of which pose little or no danger as a weapon in common shipment sizes. Second, The written plan requirement is too strongly worded, and is impossible to comply with as drafted. This wording will certainly result in additional liability exposures to transporters, who will be unable to fully comply with the strict requirements. Third, the transportation and routing requirements of 172.802 (c)(4), which deals with identification of preferred and alternative routing, is unworkable for the propane industry.

NPGA believes that the security plan proposal covers too broad a range of materials. RSPA would cover all companies covered by the registration requirements, with very limited exceptions. This would include companies moving household paint, helium gas for balloons, and a host of other items. With this mandate, RSPA risks watering down the security planning requirement and rendering it ineffective. Security plans, whether written or not, should focus on the substances most likely to cause threats to the public at large.

NPGA does not believe that gases such as propane fall within this “highest hazard” category. Propane has an excellent safety record both at the storage site and in transit. Propane’s narrow range of flammability, its tendency to disperse rapidly if released, and the robust, federally-regulated systems used to contain the product all support the assertion that propane should not be considered a weapon of mass destruction. Furthermore, stored propane is woven into the fabric of American society, and can be readily found for purchase at most gas stations, convenience and grocery stores across America. A majority of American homes have propane stored on-site for gas grills, and millions of homes have larger quantities stored for heating and cooking needs. RSPA should focus on hazmat transportation threats that truly will disrupt American society, rather than getting drawn into activities more commonly associated with low-level crime.

The written plan requirement is too strongly worded. NPGA is deeply concerned with much of the language in the security plan component of the NPRM. The purpose of any planning, whether for security or safety, is to reduce and mitigate risks. However, the NPRM as worded mandates “assurance” of 100% risk-free operations. This is not possible. For example, proposed Section 172.802(b) requires the plan to incorporate an element regarding unauthorized access. Companies would be required to have “a process to assure that unauthorized personnel do not have access to hazardous materials or transport conveyances being prepared for transportation of hazardous materials.” Propane storage facilities are fenced and protected in accordance with *Standard 58, LP Gas Code*, published by the National Fire Protection Association. However, neither this standard nor any conceivable process or standard can possibly “assure” that unauthorized persons will be barred from a propane facility. Indeed, NFPA 58 permits the public to enter propane facilities to conduct normal business, such as to re-fuel a camper or grill cylinder. This is a common occurrence at tens of thousands of propane sites across America daily. The NPRM would now implicitly prohibit the normal conduct of business for propane companies in this manner.

The security plan requirement will create additional liability problems for companies who are unable to achieve its mandates. Just as federal hours of service requirements are commonly used now in civil accident cases, so the security planning requirement will open a new avenue to attack transportation companies in litigation. Unlike the hours of service requirements, however, which are discrete and can be adhered to, many of the requirements for security planning are overly broad, vague, and subject to interpretation. For example, proposed Section 172.802(c)(2), which requires a system for verifying that carriers have on-going transportation security programs. RSPA should do everything it can to avoid criminalizing companies for being the victims of a terrorist attack or a common crime.

NPGA is also concerned with 172.802(c)(4), which deals with identification of preferred and alternative routing. Local propane delivery routes can be very fluid, particularly within a 100-mile radius of the bulk plant on multiple drops to residential and commercial users. These routes are typically based upon driver discretion with a focus on delivery efficiency and customer requirements. Safety is maintained by ongoing enforcement programs at the federal, state, and local levels. Such a requirement for propane companies to develop and file what are essentially “flight plans” for the operation of 38,000 delivery vehicles around the nation would be next to impossible. Furthermore, it makes no sense to encourage the propane industry to avoid populated areas when the primary purpose of the industry is to deliver critical winter heating fuels to consumers who live in those areas. Very often, these deliveries are being made to consumers who live in these populated areas. As discussed earlier, NPGA believes that a route planning requirement will add hundreds of millions of dollars in additional cost to our industry alone. We are but a small part of the entire hazardous material transportation sector, so the impact to the nation’s economy if this rule were to be enacted will be even greater. Indeed, it will be nearly impossible to comply with. NPGA urges RSPA to withdraw its proposal for written security plans.

4. RSPA proposes to require security training for all hazmat employees within 90 days of the publication of the HM-232 final rule. Currently, 49 CFR Part 172 requires all hazardous materials employees to receive training to ensure that they (1) are familiar with the general provisions of the HMR; (2) are knowledgeable about specific HMR requirements applicable to their function; and (3) are knowledgeable about emergency response information, self-protection measures, and accident prevention methods. RSPA is proposing to mandate that each hazardous materials employee’s training also include a security component. Such security training must provide an awareness of the security issues associated with hazmat transportation and the methods designed to assure transportation security. The training must also include a component addressing the employer’s security plan, as proposed in the NOPR. This training must be completed within three months of the date of publication of the final rule.

The propane industry already maintains extensive programs for employee training in safety. “First 90 days” training programs conducted by the propane industry are exhaustive, but there is no reason why these programs could not be expanded to include a security component. This point notwithstanding, the proposal seems to be a solution in search of a problem. First, both large and small companies are already providing security information to their employees. This happens in part because of the risk of terrorist attack, but more often to assure that valuable

loads of propane are not lost to accidents; no employee gets hurt; and customers are served as quickly and efficiently as possible. Moreover, industry employee technical training programs currently call for the development of a security module for plant and delivery personnel. NPGA therefore does not oppose a federal rule that hazmat employee training be changed to require a security component. However, NPGA does believe that the timetable for implementation is insufficient for effectively communicating the requirement to the industry, developing appropriate educational material, and scheduling training classes, particularly if any uniformity is to be expected. A minimum of one year would be required and we urge RSPA to lengthen the timetable accordingly.

Conclusion. NPGA understands the pressures RSPA is under to implement new policies and procedures to reduce the risk of terrorist attacks on America's hazmat transportation infrastructure. However, we strongly believe that RSPA needs to understand the consequences of implementing the HM-232 proposals. The costs of propane gas to American citizens will increase out of all proportion to any increases in safety or security. Restricting the ability of marketers to serve their customers most efficiently will lead to service disruptions and an increased likelihood of out-of-gas calls, which lead to their own safety risks. The number of trucks on the road will need to increase to make up for inefficiencies imposed by new regulations, placing additional pressure on companies to hire additional (and hard-to-find) drivers. Where additional drivers are unavailable, RSPA runs the risk of creating incentives to violate the Hours of Service rules. All of these are likely consequences of regulatory proposals that will have minimal effect in increasing security of hazmat shipments.

Thank you for your consideration of these comments. Should you have questions or require further information, please don't hesitate to contact me anytime.

Sincerely,

Philip A. Squair
Vice President
Regulatory and Technical Services